

COURT CLERKS OFFICE

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG - 4 2022

SEAN P. McAWOY, CLERK
DEPUTY
YAKIMA, WASHINGTONUNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA NO. 1:22-CR-2027-LRS
Plaintiff

v.

MOTION TO DISMISS

INDICTMENT PURSUANT

NATHAN LYNN CLOUD

TO FED. R. CRIM. P. 6.

Defendant

(E) (ii) VIOLATION

UNDER BRADY AND

NAPUE VIOLATION

This is a motion by Defendant NATHAN LYNN
CLOUD pro'se pursuant to Fed. R. Crim. P. 6 (E)
(ii) and, Brady v. Maryland, moves to
DISMISS SUPERSEDING INDICTMENT.

BACK GROUND

On January 27, 2022 Yakima County
Sheriff Officers went to Mr. Cloud's home

1
2 to serve a warrant for his arrest at which
3 time Mr. Cloud fled on a quad vehicle and
4 evaded arrest by driving through a number of
5 orchards.

6
7 United State Marshall's is noted in
8 assisting in the chase and capture
9 of Mr. Cloud at which time Mr. Cloud
10 was given and followed directives by
11 law enforcement.

12
13 A search of Mr. Cloud yielded a small
14 amount of controlled substance, allegedly
15 five small bags methamphetamine and,
16 a bag containing a small amount of blue
17 tablets marked M.30, a vial of metham-
18 phetamine, and a very small amount of
19 marijuana.⁽¹⁾

20
21 Mr. Kyle Mowatt a United State Probation
22 officer was deployed to supervise Mr. Cloud
23 after serving a term in prison for violation
24 of 18 U.S.C. 922 (g) (1) and 924 (a) (2)

25
⁽¹⁾ See United State District Court Petition for Warrant
Attached

1
2
3 Felon in Possession of a Firearm.
4

5 PROBATION HISTORY
6

7 Mr. Cloud's supervision commenced on
8 November 7, 2019 and, have been a
9 number of violation for using and
10 possession methamphetamine.
11

12 Mr. Cloud have entered drug treatment
13 all to no avail due to his active illness
14 with drug addiction, notably the cause
15 of most probation violations in Washington
16 State.
17

18 21 USC, 841 (a)(1)(b)(1)(B)(viii)

19 Possession With Intent To Distribute

20 5 Grams Or More Of Actual (Pure)

21 Methamphetamine
22

23 Under this statute the, Possession
24 with intent to distribute must contain
25 the mens rea element in the charging

document(s)

The first element is Mr. Cloud's state of mind in possessing the controlled substance, and secondly: Actus Reus, the wrongful deed that comprises the physical component of a crime.

21 U.S.C 841 (a)(1)(b)(1)(C)

Possession With Intent To Distribute A Mixture or Substance Containing A Detectable Amount of Fentanyl

Under this statute the, Possession With Intent To Distribute must contain the mens rea elements in the charging document(s).

The first element is Mr. Cloud's state of mind in possessing the controlled substance and, Secondly; Actus Reus, the wrongful deed that comprises the physical component of the crime.

1
2
3 Review of the narrative written by Mr.
4 Cloud's probation officer Mr. Kyle Mowatt
5 March 11, 2022. Law enforcement went to
6 Mr. Cloud's home to serve a probation
7 violation warrant viable under case No.
8 0980 1:16CR0200-LRS-1
9

10 According to the narrative, Northwest
11 Violent Offender's Task Force (PNWVOTF)
12 observed Mr. Cloud jumping on a quad
13 vehicle and driving through orchards
14 in a attempt to evade arrest, and,
15 through a pat search of Mr. Cloud found
16 a glass pipe laced with methamphet-
17 amine residue, 5 bags of methamphet-
18 amine, 12 blue tablets that may or may
19 not contain a detectable amount of
20 Fentanyl.

21
22 This was not a sting or plot by the
23 task force to catch Mr. Cloud selling
24 drugs out of his home.
25

1
2
3 There is no Confident Informer, Cooperat-
4 ing defendant, no audio or video
5 recording of a transaction, no buy
6 money as a result of a drug transaction.

7
8 Under the Statute in the indictment
9 charging Mr. Cloud with intent to distribute
10 without any of these factors above
11 pursuant to the mens rea elements,
12 possession with intent to distribute is
13 no where to be found..

14
15 I. GROUND FOR DISMISSING INDICTMENT
16 Fed. R. Crim. P. 6 (E)(ii)

17
18 Pursuant to Fed. R. Crim. 6. (E)(ii), Mr. Cloud
19 believe that there are grounds that exist
20 to dismiss the indictment because of
21 matters that occurred before the Grand
22 Jury

23
24 (1) False and colorable testimony was
25 presented to the grand jury to obtain a

1
3
3 grand jury indictment where the narrative
4 and all reports of Mr. Cloud's actions
5 during service of the arrest warrant do
6 not fit the statutes he is charged with
7 violating.

8
9 (2) Law Enforcement exaggerated a
10 text message found in a phone in Mr.
11 cloud's possession of someone asking him
12 if he had any blues that was sent months
13 before this incident in the charging indictment
14 in which Mr. Cloud did not respond to the
15 text message.

16
17 BRADY VIOLATION

18
19 Pursuant to Fed. R. Crim P. 5 (F) (1)
20 Reminder of The Prosecutorial obligation
21 under Brady v. Maryland, 373 U.S. 83
22 (1963) Law Enforcement suppressed
23 the timeline of the text message
24 in order to give the grand jury and
25 envisage feel that Mr. Cloud is a drug dealer.

1
2
3 The three components of a true Brady
4 violation (1) the evidence at issue must
5 be favorable to the accused, either
6 because it is exculpatory or because
7 it is impeaching. (2) that the evidence
8 must have been suppressed by the
9 prosecutor, either willfully or inadvert-
10 ently; and (3) prejudice ensued.

11 Strickler v. Greene, 527 U.S. 263, 281
12 - 82 119 S.Ct. 1936 144 L.Ed.2d 286
13 (1999) citing United States v. Bernard,
14 623 F.3d 551, 556 (9th Cir 1979)

15
16 In order for the prosecutor to comply
17 with Brady he/she has a duty to
18 learn of any favorable evidence
19 known to others acting on the govern-
20 ments behalf in the case including
21 police and probation officer in Mr.
22 Cloud's case.

23
24 NIAPUE CLAIM
25

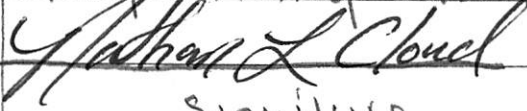
1
2
3 To establish a Napue claim under
4 Napue v. Illinois, 360 U.S. 264, 269, 79
5 S.Ct 1173, L.Ed. 2d 1217 (1959), the
6 defense must show (1) that the
7 testimony or evidence was actually
8 false (2) The prosecutor knew or
9 should have known that the testimony
10 was actually false and (3) The false
11 testimony was material (2022 U.S.
12 Dist LEXIS 16) Towery 641 F.3d at 308
13 quoting United States v. Zuno-Arce,
14 339 F.3d 886, 889 (9th Cir 2003)
15 In assessing material, the court
16 must determine whether there is any
17 reasonable likelihood that the
18 months old text message could have
19 affected the grand jury decision.

20
21 The evidence taken and represented
22 (Months Old Text Message) is by no way
23 related to the conduct Mr. Cloud is
24 being charged with and representing
25 and attesting to this evidence

1
 2
 3 before a grand jury violates Fed. R. Evid.
 4 403 for the probative value bears the
 5 danger of unfair prejudice and did in
 6 fact mislead the grand jury decision in
 7 believing the controlled substance found
 8 on Mr. Cloud was in fact intended for dist-
 9 ribution and sales and not simple
 10 possession of a well documented character-
 11 istics of Mr. Cloud's drug addiction
 12

13 THEREBY Mr. Cloud have met the cause
 14 to dismiss the indictment under Fed. R.
 15 Crim. P. 6 (E) (ii), Brady and Napue
 16 claim under the stated law.
 17

18 Respectfully Submitted

19 

20 Signature

21 Nathan L. Cloud

7-31-2022

22 Print

23 Yakima County Jail

24 111 No. Front Street

25 Yakima Wa. 98901

Address